

Final Report

EVALUATING THE USE OF GOOD NEIGHBOR AGREEMENTS FOR ENVIRONMENTAL AND COMMUNITY PROTECTION

August 2004

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EXECUTIVE SUMMARY

Community groups in the United States occasionally enter into negotiated agreements with local communities to alleviate negative environmental and public health impacts associated with polluting industries. These so-called Good Neighbor Agreements (GNAs) take a variety of forms, but typically commit the company to mitigate the offending practices in exchange for the community group's commitment to stop legal and public relations challenges to business operations. Many community activists believe that GNAs are a promising tool for community empowerment. This premise is explored in the following review of 11 GNA case studies.

The overall conclusion and recommendation emerging from this study is that GNAs are, in fact, a process worth pursuing in the right circumstances. Those circumstances are varied, but at a minimum, require a company with the potential to address community concerns while maintaining economic viability, and a community group with sufficient leverage, resources and skill to move through the often long process. Five specific findings are offered:

- (1) Environmental GNAs are Rare. Although the “GNA approach” has been in existence for several years, it is still a fairly rare strategy used by community organizations to address environmental, public health, and nuisance concerns.
- (2) The GNAs Studied are Generally Quite Effective. The case studies strongly suggest that when used in appropriate circumstances, the GNA approach can be (and often is) an effective and appropriate approach for a community group to address environmentally-oriented company/community conflicts.
- (3) The Northern Plains GNA is Atypical. The arrangement between Northern Plains and its partners with the Stillwater Mine is unusually sophisticated in terms of the scope and complexity of the agreement, and the community group resources committed to the GNAs successful implementation.
- (4) Formal—i.e., Written and Legally Binding—GNAs are Highly Desirable, but May Not Be Essential to Achieving Implementation Success. Although there is not a direct correlation between the formality of the agreements and their degree of implementation success, having a written and binding agreement offers additional opportunities to ensure compliance should the signatory company become uncooperative.
- (5) GNAs Are Best Viewed as a (Long and Difficult) Process. Successfully utilizing the “GNA approach” requires navigating three very different stages typically spanning several years: (Stage # 1) getting the company to the negotiation table, (Stage # 2) GNA negotiation/design, and (Stage # 3) implementation.

GNAs are not needed everywhere. But where the safety net of environmental law and regulation is inadequate, GNAs can be a valuable tool for community activists.

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List of Acronyms

BAAQCD	Bay Area Air Quality Control District
BCC	Buffalo Common Council
BLM	U.S. Bureau of Land Management
BREATHE	Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions
BRL	Bowie Resources Ltd.
CAC	Citizens Advisory Council
CAFO	Confined Animal Feeding Operation
C/LRTC	Community/Labor Refinery Tracking Committee
CBE	Communities for a Better Environment
CCN	Concerned Citizens of Norco
COCOA	Citizens of Owyhee County Organized Association
CRC	Cottonwood Resource Council, Crockett/Rodeo Coalition
CWG	Community Working Group
ECO	Environmental Community Organization
EIS	Environmental Impact Statement
GNA	Good Neighbor Agreement
GNC	Good Neighbor Committee
LABB	Louisiana Bucket Brigade
NFCWG	North Fork Coal Working Group
NPRC	Northern Plains Resource Council (or Northern Plains)
OCA	Ohio Citizen Action

R&H	Rohm and Haas
RP	Rhone-Poulenc Basic Chemicals Company
SBESC	Seneca Babcock Environmental Subcommittee
SEA	Shoreline Environmental Alliance
SPA	Stillwater Protective Association
SMC	Stillwater Mining Company
TRI	Toxic Release Inventory
TUEF	Texans United Education Fund
TWC	Texas Water Commission
WCTC	West County Toxics Coalition
WSERC	Western Slope Environmental Resource Council

INTRODUCTION

The body of this Good Neighbor Agreement (GNA) evaluation report is relatively brief, with most details and supporting material presented in a long series of appendices. The report begins with this introductory section explaining what a GNA is and why and how we conducted the evaluation. This is followed by an overview of the cases investigated for this report, and an assessment of their success. Knowledge gained from these case studies is then summarized as key findings, followed by concluding remarks. The appendices that follow the main report contain a wealth of information, primarily focusing on further describing the case studies (particularly the Northern Plains arrangement with Stillwater Mine) and the research methodology.

WHAT ARE GOOD NEIGHBOR AGREEMENTS?

In many locations throughout the United States, communities suffer negative environmental and social impacts from neighboring industries. Conflicts are particularly common in areas dominated by industries such as petrochemicals, manufacturing, and mining. A variety of federal, state, and local laws, and their associated permitting programs, provide some protections for local communities. However, these protections are frequently viewed by communities as inadequate, often failing to recognize and address the full range of local concerns, and enforced by agencies with a limited set of remedies and, frequently, declining budgets and staffs. Additionally, these protections can create regulatory costs and uncertainties detrimental to the companies and, in many cases, the communities as well. Communities, companies, and governments often see a need for better solutions.

Increasingly, community organizations—sometimes in conjunction with local governments—are choosing to address these conflicts through the use of agreements negotiated directly with the local companies. These so-called Good Neighbor Agreements (GNAs) take a variety of forms, but typically are documents promising company concessions and behavioral changes designed to reduce (and more fully disclose) negative community impacts. Despite the positive sentiments evoked by the “Good Neighbor” terminology, these concessions are typically the product of hard-fought negotiations, and then, are only offered in exchange for a community commitment to stop litigation, a permit challenge, or some other form of activism against the company.

WHY EVALUATE GNAs?

In the summer of 2001, the Northern Plains Resource Council (hereafter “Northern Plains” or NPRC) contracted with the Natural Resources Law Center and Anne Fitzgerald Associates to conduct a three-year study of environmental GNAs. There were several motivations for this study. First and foremost, Northern Plains is already a signatory and active participant in a GNA with the Stillwater Mine (Montana), one of the

world's largest producers of platinum and palladium.¹ While this is enough to make Northern Plains an expert on the design and implementation of GNAs, the organization's experience with GNAs is nonetheless limited to this one example. In order to potentially improve the functioning of this arrangement and to guide ongoing discussions about potential new GNAs in other substantive areas (e.g., coalbed methane development), Northern Plains felt that the organization could benefit from an outside perspective and from a comparison of the Northern Plains GNA experience with others nationally. This evaluation and review was to have at least two additional benefits. First, it would allow the organization to better respond to the dozens of inquiries flooding in from other community organizations considering the adoption of environmental GNAs, and similarly, to better share knowledge among other groups that, like Northern Plains, had some first-hand experience with GNAs. And secondly, such a review would be helpful in guiding funders anxious to assist communities in the resolution of environmental problems. Much like the community groups and companies that sign GNAs, the funding community is interested in generating maximizing return on its investments. An evaluation of GNA performance could greatly inform these decisions.

These various motivations came together when the William and Flora Hewlett Foundation, a long-time supporter of Northern Plains and their GNA arrangement, offered to fund a three-year evaluation of GNAs, with the intention of generating information that could be of use to Northern Plains, other community organizations with or considering GNAs, and the funding community.

RESEARCH METHODS

This study is primarily based on a review of 11 case studies, with the majority of data collection being accomplished through a written survey, the review of written documents where available (including the GNA itself), oral interviews, and three workshops held in Montana (at the end of year 1, 2 and 3 of research). This work was done collaboratively among the research team, with most survey work and the literature review being coordinated by the Natural Resources Law Center, most phone communications conducted by Anne Fitzgerald Associates, and the hosting of workshops by Northern Plains. The case study approach was seen as essential since there is not a rich GNA literature, and since our goal is to identify lessons and trends that relate to the use of GNAs in practice.

In all of this work, our communications were with the community groups—and not the companies—involved in the GNAs. This focus on community groups persists in the analysis of data and the formulation of conclusions. A companion study from the perspective of the companies would undoubtedly be a worthwhile effort, but was considered beyond the scope and intended audience of this investigation.

¹ Palladium is a primary component in catalytic converters used to reduce automobile emissions. Only 3 mines worldwide produce palladium.

Shoreline Environmental Alliance, CBE, Crockett/Rodeo Coalition

and

Unocal

Introduction

On April 7, 1995, a Good Neighbor Agreement (“GNA”) was signed by Union Oil Company of California (“Unocal”), Shoreline Environmental Alliance (“SEA”), Crockett/Rodeo Coalition (“CRC”), and Communities for a Better Environment (“CBE”). The purpose of the GNA was to address issues of concern to the local community regarding accidental chemical releases from the refinery. The agreement is legally binding and presumably still in effect today.

The Parties

CBE is an environmental health and justice non-profit organization, promoting clean air, clean water and the development of toxin-free communities. CBE’s three-part strategy consists of grassroots activism, environmental research and legal assistance within underserved urban communities. CBE directly equips residents impacted by industrial pollution with the tools to inform, monitor, and transform their immediate environment.

A direct result of CBE’s involvement with the Crockett/Rodeo community and the GNA negotiation process was the formation of the community group SEA in 1994. SEA has a paid staff of three and an annual operating budget of \$50,000 derived from individual and member contributions (5%), government grants (75%), and foundation grants (20%).

Unocal began operations in the community in 1879. The refinery employs 200-400 local residents and is moderately important to the local economy. At the time the GNA was negotiated, Unocal was profitable, expanding, and publicly traded.²⁷

Nature of the Dispute

In September 1994, Unocal had two separate releases of toxic substances, one of which was potentially deadly hydrogen sulfide gas which hit the local elementary school and sickened many children and teachers. (The first release lasted sixteen days and was the result of the company intentionally keeping on-line a unit known to be leaking.) Complaints from the community fell on deaf ears at Unocal. As community outrage and demands for action grew, there were several public meetings and strategy sessions attended by community leaders, environmental groups, and labor unions. The groups decided to challenge Unocal’s expansion permits to try to force them to sign a legally binding GNA. In spite of initial resistance, Unocal finally agreed to negotiate

²⁷ Ratings and other opinions are taken primarily from SEA’s responses to the GNA survey.

after county supervisors directed them to do so if they wanted to be approved for their reformulated fuel construction permits.

The citizens' primary concerns were public health, nuisance and quality of life, and impacts on the environment. Prior to negotiating the GNA, the community groups, as well as individual residents, took numerous actions, including participating in public hearings, appealing permit decisions, urging regulatory agencies to better enforce the laws, filing individual lawsuits, trying to get regulatory agencies to file suit, meetings with company representatives, phone calls, negative publicity campaigns, and community "bucket brigades."

Negotiation of the GNA

Numerous parties took part in the GNA negotiations, including CBE, SEA, CRC, Bayo Vista Housing Project, union reps, local government reps, members of the general public, and Crockett and Rodeo Chamber of Commerce reps. The agreement took eight months to complete, during which time one to three meetings per week were held which lasted up to five hours each. During negotiations, SEA had access to lawyers and legal expertise, trained negotiators, and technical/economic data, but Ms. Kessler felt they did not have access to technical consultants. Denny Larson states that SEA did, in fact, have access to numerous technical consultants such as CBE's scientists, other medical and scientific experts, and Mr. Larson himself, who served as a media/organizing and negotiation advisor.

SEA and other participants sought numerous commitments from Unocal including specific pollution prevention, reduction, and remediation measures; traffic mitigation; investments in the local community; performance of and community involvement in regular environmental audits and monitoring; access to emergency response plans; financial support for the community group(s); and a fence line monitoring system. One measure that the community desired but did not pursue in negotiations was the removal of the only elementary school in the area from the Unocal fence line. Unocal instead agreed to conduct an area wide risk assessment of all the schools in the vicinity of the plant, both public and private.

At the suggestion of the unions involved in the negotiations, Unocal was asked to sign a simple statement that committed them to negotiating a list of concerns in good faith to resolution (similar to what unions do at the start of contract talks). In agreeing to negotiate, Unocal was seeking to end the challenge to their land use permit for the clean fuels expansion project. However, Unocal subsequently tried to back out of actually signing an agreement to negotiate, and the community groups went to the press and the county planning department that was hearing Unocal's permit case. As a result, the county took the extraordinary step of passing a permit condition that required the company to sign a GNA.

Mr. Larson stated that one successful negotiation tactic was to bring a court reporter to each meeting to take exact minutes that were then written up and approved. This was a very important strategy which prevented Unocal from backing out of signing the agreement to negotiate in good faith. Other important sources of leverage were the revelation that the 16-day leak was 100% preventable and the support of Ed Masry and Erin Brockovitch who filed the

toxic tort cases. Also, leverage was provided by an agreement with the trade unions to not sign a labor contract unless a GNA was signed and the GNA parties to not sign a GNA unless a labor contract was signed.

In the final document, Unocal agreed to the following provisions:

- Health Risk & Medical Monitoring
 - o Continue to fund independent health risk assessment;
 - o Fund the establishment and operation of a medical clinic for diagnosis and treatment of people affected by the Unocal Catacarb release incident;
 - o In the event of a release, work with local health care providers to provide early medical intervention for affected residents;
 - o Fund epidemiological study of the health impacts of recent chemical release on the affected members of the community; and
 - o Fund an emergency response van.
- Emergency Response and Community Warning
 - o Create and fund a health effects database;
 - o Participate in a working group to develop a feasible community-based information and notification system that will meet the community's needs; and
 - o Fund the purchase and installation of a siren as part of the county community warning system.
- Vegetation and Parks
 - o Plant vegetation on land between the refinery and Rodeo;
 - o Fund construction of a bike path through Unocal property; and
 - o Contribute \$5,000 each to Lindsay Museum and to the Carquinez Preservation Trust for trees.
- School Safety Issues
 - o Install and maintain a permanent monitoring station at the local elementary school;
 - o Provide emergency response education and training to teachers and students; and
 - o Contribute \$500,000 to the elementary school for chemical safety issues.
- Vocational Training and Local Hiring
 - o Fund vocational training at local high school;
 - o Announce job opportunities locally; and
 - o Institute and fund a local hiring outreach program.
- Transportation
 - o Mitigate traffic impacts from construction of the Reformulated Gasoline Project;
 - o Contribute \$4.5 million to county for local roads; and
 - o Discontinue use (and transportation) of anhydrous ammonia by 12/31/01.
- Environmental Issues
 - o Install a state-of-the-art fence-line monitoring system;
 - o Fund an independent audit of the refinery;
 - o Reduce onsite emissions of Volatile Organic Compounds (VOCs), and
 - o Make audit and study results available through the Community Advisory Panel.
- Financial Issues
 - o Contribute \$300,000 annually to local communities and schools;
 - o Funds not spent can be carried over to the following year; and
 - o Agreement to negotiate continuation of payments after 15 years.

The community groups agreed to drop permit challenges to Unocal's Land Use Permit and the associated Environmental Impact Report as well as the Authority to Construct and Permit to Operate issued by the Bay Area Air Quality Management District.

The GNA assigns the task of developing a process for distribution of the funds within six months to CRC and SEA. It further assigns oversight of the GNA to CRC. Unocal also agreed to submit a quarterly summary to the CAP reporting progress on implementation of the GNA.

The GNA does contain dispute resolution procedures – specifically, mediation – with Unocal agreeing to pay one-half the cost of the mediator. If mediation fails to resolve the dispute, any party may bring a lawsuit; however, the agreement expressly prohibits payment of attorney's fees to the victorious party.

The provision which discusses a change in ownership states that a party may transfer or assign the GNA to a successor as long as “the affiliates, successors, or surviving corporation shall agree in writing to assume all of the obligations hereof.” According to Denny Larson, this “clause is as airtight as it gets.” However, when the plant was sold the new owners tried to get out of the GNA and only agreed to continue to abide by it when they were “pressed.” The most current status of implementation of the GNA provisions are presented later in this case summary.

Costs

No specific cost information was available for negotiation of the GNA. An estimated \$45,000 was spent by SEA for implementation, and it is not known how much Unocal spent, but the funding commitments easily exceed several million dollars. The GNA did not specifically provide for funding for oversight and implementation activities performed by SEA or other community groups. Kasha Kessler states that a portion of the annual \$100,000 contribution to each community was supposed to go to oversight, but Community Foundation politics prevented this from happening.

Implementation

This toxic substance accident destroyed any previously existing trust held by the county, cities and area agencies. The lack of trust set the stage for negotiating the GNA. The community members decided to focus their attention to finding ways to reduce waste, clean-up materials, provide health care, and implement a monitoring system. At the same time, the refinery had just applied for a land use permit, a permit that the community groups could use as leverage during negotiations. The GNA was negotiated and signed within three months of the accident. Portions of the GNA were adopted into the final permit award, assisting with the enforcement of certain provisions.

As of July 2004, representative Janet Callaghan estimates that approximately 60% of the commitments in the GNA have been honored by Unocal. Some problems have been encountered

with the implementation process. The company previously known as Unocal has since been sold twice, and is now Conoco/Phillips. The subsequent owners have disregarded many sections of the GNA. In fact, no disputes have been resolved following the procedures outlined in the GNA. Unfortunately, SEA is currently a shadow of its former self. When the GNA was first formed, SEA had access to \$50,000 for monitoring purposes and was present at meetings. Now, there is no money left and no direct line of communication. Because SEA has not continued its oversight activities, it is unknown how many other commitments have not been met. There are five active board members that meet once a year to help monitor the GNA. Enforcement of the GNA relies solely on the tenacity of the individuals involved. For example, one person receives real-time fence-line monitoring data over the internet, another receives month Conoco/Phillips fence-line emission summary reports, while two others continue to interface with the plant as CAP members. Four SEA members are actively involved in the fence-line monitor upgrade taking place in 2003-2004. Although the plant is supposed to publish quarterly implementation progress reports, the last reports were viewed on May 31, 2002 and in the fall of 2003. Regarding advice for further GNA negotiations, it was noted that it is difficult to maintain a GNA without the necessary funding and follow through.

Because of the difficulty experienced by the community group in obtaining funding to monitor their GNA, the current implementation condition of several provisions are unknown. Additional details about the status of implementation activities are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
<p>Health Risk and Medical Monitoring</p> <ul style="list-style-type: none"> ▪ Pay for medical assessment and treatment of victims ▪ In the event of a subsequent release, work with local health care providers to provide early medical intervention ▪ Contribute up to \$238,000 to epidemiological study of the health impacts of the recent chemical release ▪ Provide up to \$20,000 to fund an Emergency Response Van 	<ul style="list-style-type: none"> ▪ The company paid for medical assessment and treatment of victims ▪ It is difficult to assess the provisions regarding subsequent releases because (a) no "major" releases since the agreement, and (b) the community group lacks access to individuals' medical records ▪ The company was to establish and operate a medical clinic to treat people affected by the release incident for up to 6 months (at \$120,000 month); in actuality, the company set up the clinic for 18 months ▪ Funded independent health risk assessment and released a final report 	<ul style="list-style-type: none"> ▪ Although the independent health risk assessment was conducted, SEA felt the findings were skewed and followed up with a report of their own
<p>Emergency Response and Community Warning</p>	<ul style="list-style-type: none"> ▪ Funded the purchase and installation of siren as part 	

<ul style="list-style-type: none"> ▪ Create and fund a health effects database for refinery chemicals by March 1, 1995 ▪ Participate in a working group to develop a feasible community-based information and notification system ▪ Notification system designed by July 1, 1995 and installed by December 31, 1995 	<p>of warning system (although it is unclear if the system really works)</p>	
<p>Vegetation and Parks</p> <ul style="list-style-type: none"> ▪ Continue funding Lindsay Museum at previous level ▪ Contribute \$5,000 to educational programs ▪ Make \$5,000 donation to Carquinez Strait Preservation Trust for trees ▪ Maintain membership in Carquinez Strait Preservation Trust 	<ul style="list-style-type: none"> ▪ The company did a lot regarding vegetation (and is committed to spend \$30,000 per year for nine years to vegetate appropriate areas) 	<ul style="list-style-type: none"> ▪ The company did little to implement provisions relating to parks ▪ Company was supposed to build bike path through Unocal property, but decided it was a bad idea to invite people into this hazardous area
<p>Transportation</p> <ul style="list-style-type: none"> ▪ Mitigate traffic impacts from construction of Reformulate Gasoline Project ▪ Contribute \$4.5 million to county for local roads 	<p>Discontinued use and transportation/storage of anhydrous ammonia</p>	
<p>Environmental Issues</p> <ul style="list-style-type: none"> ▪ Install a state-of-the-art fence-line monitoring system ▪ Fund independent audit of refinery ▪ Transmit to SEA all written and verbal incident notifications and written materials provided to Community Advisory Panel (CAP) ▪ Make hydrogen sulfide facility study results available through CAP ▪ Do not seek emission reduction credits for any air pollution reductions listed in GNA 	<ul style="list-style-type: none"> ▪ Infrared air monitoring system in place ▪ Reduced fugitive emissions of Volatile Organic Compounds (VOCs) by 34% through leakless valves 	

Lessons Learned

If similar disputes were to arise in the future, group member Janet Callaghan would choose to negotiate another GNA. In addition, the group could pursue options such as filing suit, “taking to the streets”, and applying political pressure. If the group had it to do over again, they would reduce the number of people at the negotiating table; only negotiate issues that dealt directly with the mitigation of the toxic releases; keep the issues more focused; get more money; and have an airtight redress process and legal section. Denny Larson points out that the parties did “take it to the streets” and applied political pressure; that allowed certain provisions in the GNA to be enacted even before the GNA was signed. He also points out that initially Unocal tried to cut a deal with a county supervisor, and if the community groups had not demanded that the process be opened up and more parties allowed a place at the table, there would not have been a GNA. He feels that most of their strength came from the 100% inclusion demand.

One unexpected benefit of the GNA was follow-through on installation of the state-of-the-art fenceline monitoring system. After this system was installed in 1997, there have been no further releases of toxic chemicals into the community.

Kasha’s concerns regarding the ability of SEA to monitor the GNA stem from SEA being “hamstrung” from the beginning by the Foundation (which was formed to distribute the mitigation funds). (Mitigation funds are used for a variety of community programs, and are not necessarily reserved for dealing with GNA implementation or the issues at the heart of the GNA.) Her advice to other groups is to go in with a united front, a clear idea of your goals, and make sure your legal section is enforceable and legal action financed. Mr. Larson points out that the difficulties SEA has had with the Foundation are more a reflection on SEA’s organizing strength and not that the GNA would not allow for any implementation monitoring funding. Mr. Larson agrees that the provision that “no payment of attorney’s fees shall be allowed” should not have been included, at least with respect to citizens’ suits filed to force implementation of the agreement.

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